

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 20298 (Application 28912)

Danny Paul Rogers

**ORDER APPROVING REQUEST TO SET ASIDE ORDER REVOKING
PERMIT AND APPROVING REQUEST TO REINSTATE PERMIT**

SOURCE: South Fork Jackson Creek tributary to Jackson Creek thence Dry Creek thence
Mokelumne River

COUNTY: Amador

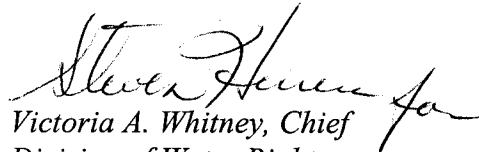
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

WHEREAS:

1. On November 12, 2004, Danny P. Rogers (Permittee) signed a revocation request form requesting that the State Water Resources Control Board (State Water Board) Division of Water Rights (Division) revoke Permit 20298 (A028912).
2. On February 28, 2005, the Division issued an order revoking Permit 20298 pursuant to Permittee's request.
3. On March 7, 2005, the Division received a note from the Permittee requesting that the Division set aside the revocation under Water Code section 1410.2.
4. California Water Code section 1410.2 provides: "In any case when a permit is revoked without a hearing as provided in section 1410.1, the Permittee, within 90 days of the date of the order of revocation, may file with the Board a request to set aside the revocation, and the Board, for good cause shown, may reinstate the permit." This authority is delegated to the Chief of the Division by Resolution No. 2002-0106, section 2.6.24.
5. Section 1410.2 of the Water Code has a similar effect to that of the Code of Civil Procedure section 473, which allows a court to relieve a party from a judgment, dismissal, order or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. The question of good cause to reinstate the permit does not reach the merits of the revocation. Rather, the Permittee must show why they failed to file a request for a hearing within the time specified by the order. (WRO 2002-08-EXEC at 2.)
6. Permittee states that he requested revocation and waived his right to hearing under pressure from the Division's newly implemented fee schedule. In addition, Permittee states that he and his wife did not fully understand the process and inadvertently revoked the permit but now understand that they want to keep their water right permit. Permittee timely filed a request to set aside the order revoking Permit 28912.

7. The Division finds that Permittee has shown good cause for not requesting a hearing because under pressure by the fee schedule and not understanding the process and ramifications of the process, Permittee inadvertently requested revocation and waived the right to hearing.

Therefore it is ordered that the order revoking Permit 20298 dated February 28, 2005, is set aside.


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **MAY 26 2005**

P. 20298

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
ORDER

Application 28912 Permit 20298 License

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 20298 was issued to Danny Paul Rogers on January 25, 1989 pursuant to Application 28912.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (SWRCB).
3. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 4 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 2001

(0000008)


2. Condition 5 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 2005

(0000009)

Dated: **OCTOBER 30 1996**


Edward C. Anton, Chief
Division of Water Rights

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

20298

PERMIT _____

Application 28912 of Danny Paul Rogers

P.O. Box 264 Jackson, CA 95642

filed on October 1, 1986, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

South Fork Jackson Creek

Jackson Creek thence

Dry Creek thence

Mokelumne River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
South 2100 Feet and West 100 feet from NE corner of Section 16	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	16	6N	12E	MD

County of Amador

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Fire Protection						
Recreation	Unnamed Reservoir					
Stockwatering	within SE $\frac{1}{4}$ of NE $\frac{1}{4}$	16	6N	12E	MD	

The place of use is shown on map filed with the State Water Resources Control Board.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1.0 acre-foot per annum to be collected from November 1 of each year to April 30 of the succeeding year. (0000005)
2. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
3. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked. (0000007)
4. Construction work shall be completed by December 31, 1991. (0000008)
5. Complete application of the water to the authorized use shall be made by December 31, 1992. (0000009)
6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued. (0000010)
7. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
8. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)
9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

10. After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season. (0000041)
11. For the protection of downstream prior rights, permittee shall bypass 0.5 cfs or the natural flow, whichever is less, during the storage season authorized under this permit. (0160400)
12. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Resources Control Board, which are capable of automatically bypassing the flow through the reservoir outside the authorized storage season and the required bypass during the storage season. Said devices shall be properly maintained. (0360400)
(0550400)
13. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JANUARY 25 1989

STATE WATER RESOURCES CONTROL BOARD


Chief, Division of Water Rights